
BZA-1718
KOMARK BUSINESS COMANY
Variance

STAFF REPORT
May 18, 2006

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner David Kovich, with engineer Paul Coutts of C&S Engineering, is seeking a variance to allow 15' front setbacks (from the right-of-way of the proposed street) instead of the required 25' on Lots 121-124 in the proposed Orchard Subdivision Phase III, Section I, located on the north side of SR 26 W, 1/3 mile east of Klondike Road in Wabash 14(NW)23-5.

AREA ZONING PATTERNS:

This site is zoned R1B and Flood Plain. To the north is Flood Plain with A zoning beyond and northeast. Large areas of R1 and PDRS zoning are located west of the FP boundary. The south property line is bordered by land zoned FP and A.

Petitioner had previously filed two variance requests for separate phases of this development regarding front setbacks: BZA-1645 in September 2003 for a 28.8' setback from SR 26 for one corner lot instead of the required 60'; and BZA-1615 in June 2002 for the same varied setback as this request: 15' instead of the required 25' front setback for 12 lots. Both variances were approved by the ABZA.

AREA LAND USE PATTERNS:

Phase III of The Orchard subdivision is located to the north of the existing Orchard subdivision, Appleridge at The Orchard Planned Development is to the west. The overall site holds remnants of old fruit tree orchards surrounded by woodlands. Tributaries of Jordan Creek cross the area. Land to the southeast is in crop production. There are homes and woods to the south across SR 26. K.B.&S. Railroad cuts diagonally across the land forming the northeast border of this property. Beyond the tracks, land is farmed. McQuinn Estates and Pine Meadows, both single-family subdivisions, occupy land west of Appleridge.

TRAFFIC AND TRANSPORTATION:

The site derives access from SR 26 via Scarlett Drive, the existing entrance street shared by Appleridge and The Orchard. Fuji, Melrose and Jonagold Courts, three proposed cul-de-sacs, will provide internal access.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

Sanitary utilities will be extended from Phase 2. Sewer services will be constructed for acceptance into the City of West Lafayette system. Water service will be part of the

Indiana-American Water Company system. Additionally, stormwater will be collected in the streets and piped to two proposed outlots along the Jordan Creek tributary.

STAFF COMMENTS:

At its May 17, 2006 meeting, the Area Plan Commission granted conditional primary approval to The Orchards, Phase III Section I (S-3780). Petitioner states that Lots 121-124 are unique because of the drainage channel that runs parallel to the rear of the lots and the presence of mature trees. The need for a variance to preserve existing trees is stated in the petition as a good trade-off. While staff appreciates the attempt to preserve natural landscaping, petitioner has other options to eliminate the need for a variance.

The Orchard Phase 1 was designed in compliance with the zoning ordinance and without the need for variance. At The Orchard Phase 2 sketch plan review meeting, it was suggested by staff that petitioner resubmit a planned development or redesign the subdivision so that the lots would better fit into the surrounding trees and existing topography and eliminate the need for a variance. This was not done however, and petitioner requested and was granted a variance for front setback reduction from the ABZA on June 26, 2002. Since petitioner, who is also the developer of the subdivision, received variance, Phase III of The Orchard was also not designed to comply with the UZO, because petitioner opted instead to request another variance.

By ordinance definition, a self-imposed situation cannot be considered a hardship. Self-imposed situations include: "any result of land division requiring variance from the development standards of this ordinance in order to render that site buildable." Staff cannot find a hardship in this case and cannot support this variance request.

Regarding the ballot items:

1. The Area Plan Commission, at its May 17, 2006 meeting, determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community because it would have no physical effects beyond the boundaries of the lots this request encompasses. Furthermore, the side yards provide adequate separation between buildings on adjacent lots.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. The side yard setbacks and open drainage channel behind the lots will protect adjacent properties and the variance will allow the preservation of mature trees. Additionally, the rear property lines of Lots 123 and 124 abut Outlot H to be used for stormwater drainage, providing further separation between neighboring lots.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. Mature trees are scattered throughout

the area and the topography is similar to the entire development.

5. This request stems from an apparent desire to follow a predetermined design rather than from an adherence to the zoning ordinance; petitioner has remedies other than the variance process, i.e. redesign of the subdivision or a planned development. Therefore, the strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. By ordinance definition, this is a self-imposed situation, not eligible to be considered a hardship.

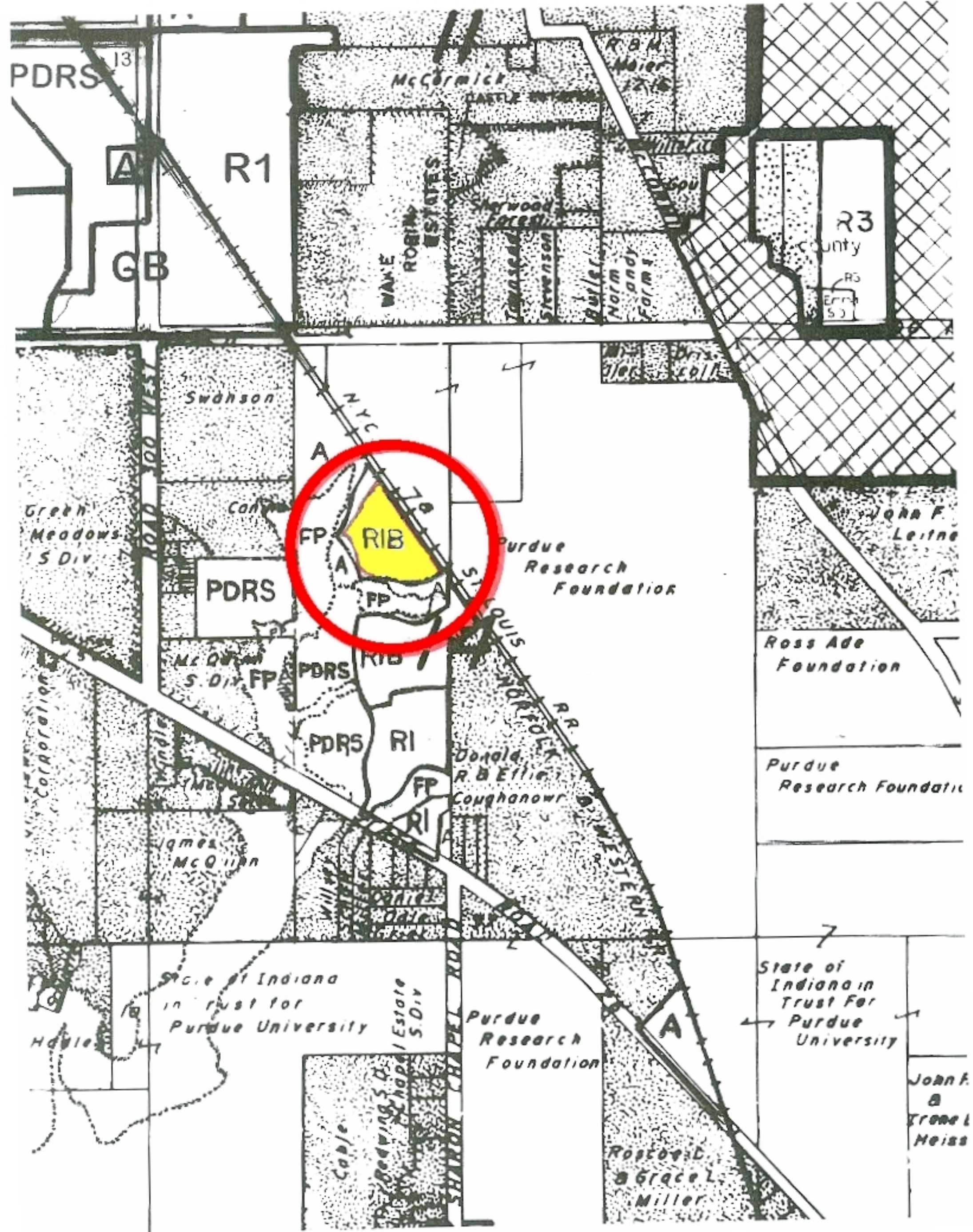
Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed because the need for the variance is the result of a land division. A better designed subdivision would not require a variance. Also, the hardship involved **IS** solely based on a perceived reduction of or restriction on economic gain; a redesign would likely reduce the number of lots.

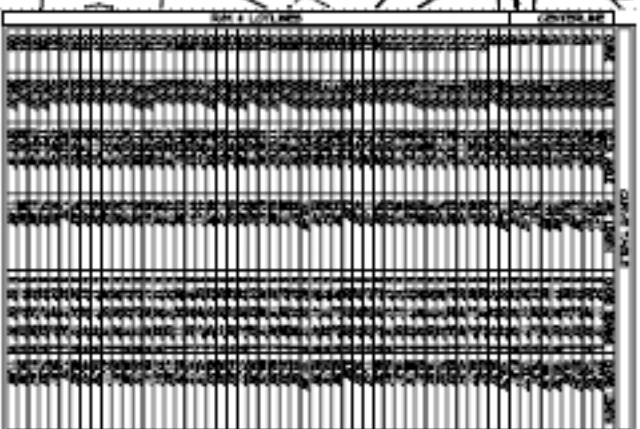
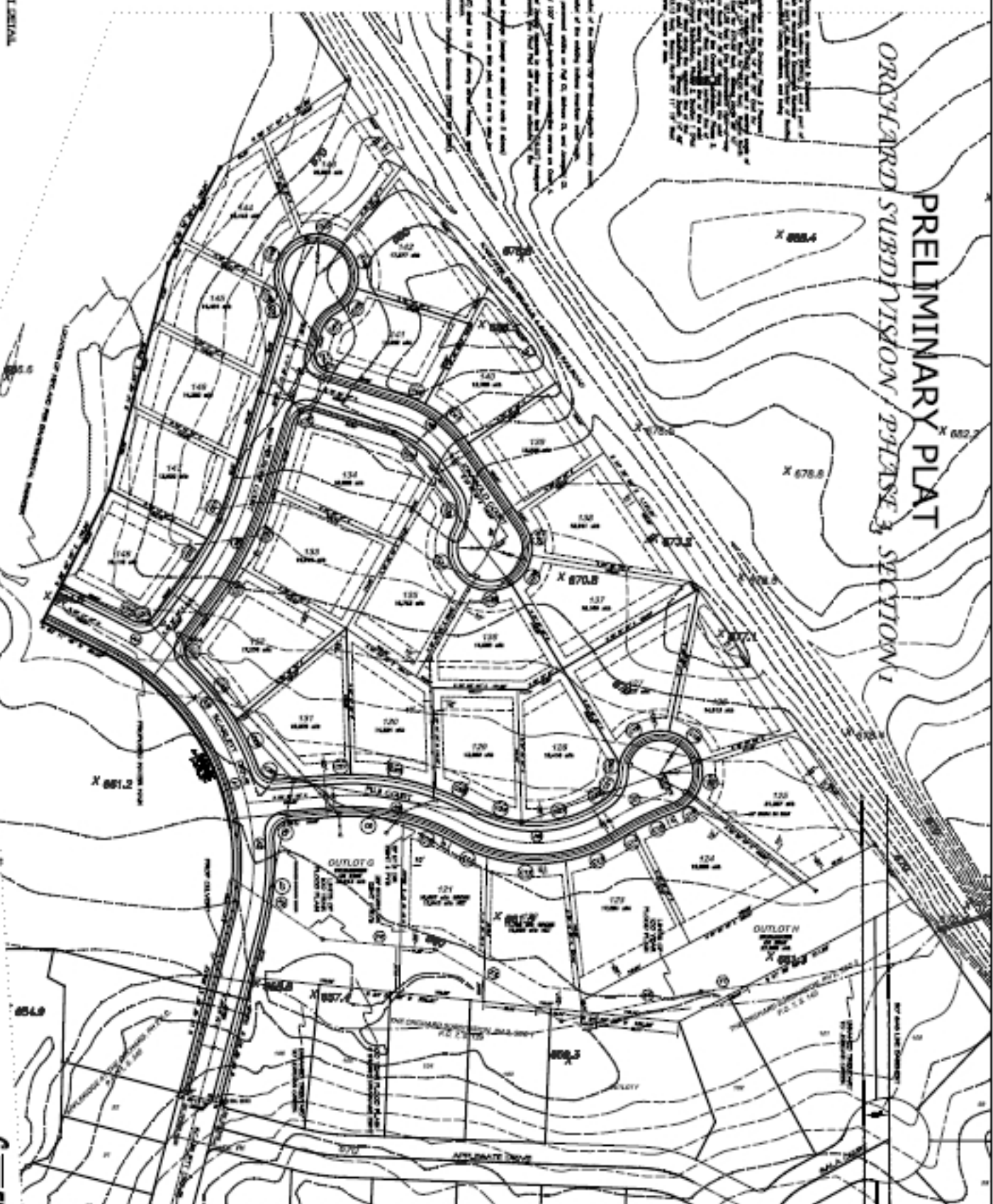
5b. Adhering to the ordinance standard of a 25' front setback constitutes minimum relief because there is no ordinance-defined hardship.

STAFF RECOMMENDATION:

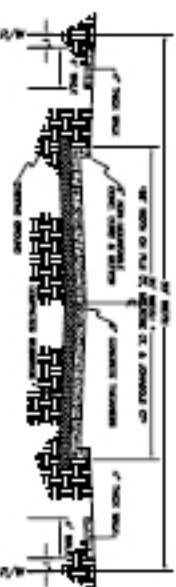
Denial



PRELIMINARY PLAT
ORCHARD SUBDIVISION, PHASE 3, SECTION 1



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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C&S ENGINEERING
CHALLENGE

PRELIMINARY PLAT - PHASE 3 SECTION ONE
ORCHARD SUBDIVISION

WABASH TOWNSHIP, TIPPECANOE COUNTY, INDIANA

Project	Start Date	End Date	Status	Progress
Project A	2023-01-01	2023-03-31	Completed	100%
Project B	2023-04-01	2023-06-30	In Progress	75%
Project C	2023-07-01	2023-09-30	Not Started	0%

NAME	MR	DATE	12/19/05	TIME	10:00 AM
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[illegible]

21. Joseph Paul, 17, arrested

[illegible]